

Members

Sen. Sue Landske  
Sen. Travis Holdman  
Sen. James Arnold  
Sen. John Broden  
Rep. John Bartlett  
Rep. Shelli VenDenburgh  
Rep. Robert Behning  
Rep. Ralph Foley  
Hon. John G. Baker  
Michael McMahon  
Jerry Bonnet  
Susan W. Gard  
Anita Samuel  
Cynthia A. Baker  
Jon Laramore



## CODE REVISION COMMISSION

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LSA Staff:

John Stieff, Attorney for the Commission

Authority: IC 2-5-1.1-10

### MEETING MINUTES<sup>1</sup>

Meeting Date: December 9, 2008  
Meeting Time: 1:30 P.M.  
Meeting Place: State House, 200 W. Washington St., 233  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Sen. Sue Landske; Sen. Travis Holdman; Rep. John Bartlett; Rep. Shelli VenDenburgh; Rep. Robert Behning; Rep. Ralph Foley; Michael McMahon, designee of Chief Justice Randall T. Shepard; Chris Naylor, representing Jerry Bonnet; Susan W. Gard; Anita Samuel; Cynthia A. Baker; Jon Laramore.

**Members Absent:** Sen. James Arnold; Sen. John Broden; Hon. John G. Baker.

**Staff Present:** Mr. Jack Ross, Executive Director, Legislative Services Agency; Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency; Mr. Bob Rudolph, Senior Staff Attorney, Office of Bill Drafting and Research; Ms. Becky Mortell, Deputy Director, Office of Code Revision; Mr. Dick Sheets, Editorial Assistant, Office of Code Revision; Mr. John Kline, Attorney, Office of Code Revision; Mr. Steve Barnes, Administrative Code.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

## **I. CALL TO ORDER**

The meeting was called to order at 1:35 p.m. by Senator Sue Landske.

## **II. REVIEW OF MINUTES**

The Commission reviewed the minutes of the Commission's last meeting on November 20, 2008, and there were no questions or revisions. The Commission approved the minutes by consent.

## **III. DISCUSSION OF NONCODE ISSUES**

Mr. John Stieff, Director of the Office of Code Revision, Legislative Services Agency, noted that he anticipated this to be the last meeting of the Commission for the interim. Mr. Stieff introduced a continuing project dealing with noncode issues for discussion by the Commission. Mr. Stieff explained that LSA attorneys reviewed hundreds of laws enacted since 1985 that contain noncode provisions to determine whether a noncode law should be repealed, preserved as a noncode statute, or placed in the Indiana Code. He stated that the attorneys balanced several factors, including the following:

- A. Is the provision substantively different from what is in the Code? If yes, this favors placing the provision in the Code.
- B. Will a large number of people use the provision? If yes, this favors placing the provision in the Code.
- C. Do substantive rights and obligations flow from the enactment of the provision? If yes, this favors placing the provision in the Code.
- D. Can an expiration date be placed in the provision? If no, this favors placing the provision in the Code.
- E. Is the provision transitional or self-terminating? If yes, this favors placing the provision in the noncode law.
- F. How long is the provision going to be in effect? If longer than 5 years, the provision needs to be in the Code.
- G. The need to be sensitive to the fact that noncode provisions are harder to research.
- H. The need to avoid the creation of practice traps for attorneys.

Mr. Stieff proceeded to discuss the contents of PD 3370, which concerns noncode acts. Mr. Stieff stated that many of the noncode statutes enacted since 1985 could be repealed because they contain an expiration date that has passed. Mr. Stieff noted that a statute contained in PD 3770 deals with these provisions by specifying that the expiration of a statute has the same effect as the repeal of the statute, effective on the date of the expiration.

Mr. Stieff said that PD 3770 also contains numerous noncode statutes upon which the attorneys in the LSA had broad agreement should be placed in the Indiana Code. He noted that by placing these statutes in the Indiana Code, the corresponding noncode statutes could be repealed in PD 3770. He stated that Bob Rudolph, Senior Attorney, Office of Bill Drafting and Research, Legislative Services Agency would give an explanation of PD 3770 to the Commission and answer questions regarding the bill.

Mr. Stieff discussed several types of noncode statutes which are not included in PD 3770. He stated that some legislators have voiced strong dissent to Medicaid Waivers being placed in the Indiana Code, so they were excluded to avoid controversy with the bill.

Mr. Stieff added that applicability provisions are not addressed in PD 3770. He stated that these provisions deserved more time for consideration than is available before the 2009 legislative session. Mr. Stieff said that consideration was needed to balance the ease of finding the law versus cluttering the text and making the law difficult to read and comprehend.

Mr. Stieff noted that several tax, finance, and budget provisions are not dealt with in PD 3770. He stated that there hasn't been enough time to have the tax, finance, and budget provisions thoroughly vetted with the budget agency, tax and finance attorneys, and other stakeholders involved. Mr. Stieff noted that many of these individuals are deeply involved in the creation of the next biennial budget.

Mr. Stieff stated that PD 3770 does not contain a blanket repeal of the remaining noncode statutes, as was done in 1971, 1976, and 1989. He said that once final decisions concerning the disposition of the noncode applicability provisions and the noncode tax, finance, and budget provisions have been made, then the rest of the noncode provisions can be repealed.

Mr. Stieff then discussed five tasks required for Phase II of the project as follows:

A. LSA will have to study how to deal with the applicability provisions in the noncode acts and how to deal with applicability provisions in the future.

B. The tax and finance attorneys in the Office of Bill Drafting and Research, with assistance from the budget agency, will have to decide how to deal with the tax, finance, and budget provisions in the noncode acts.

C. LSA will need to review the 2007, 2008, and 2009 noncode acts.

D. LSA will have to look at the noncode statutes preserved in IC 1 in 1971, 1976, and 1989 to see if some of those noncode statutes can be repealed.

E. LSA will have to prepare a Preliminary Draft of the noncode statutes to complete the work on the project left undone after PD 3770. The staff will bring this draft to the Commission for approval.

Mr. Stieff closed by saying that he would like to have the Code Revision Commission's approval to have PD 3770 prepared for introduction after hearing testimony and hearing Bob Rudolph's review of the bill. Also, he would like to get an author for the bill and have the Commission vote to have the following tag line placed at the end of the digest of the bill:

(The introduced version of this bill was prepared by the Code Revision Commission.)

Mr. Jon Laramore, attorney, asked Mr. Stieff what provisions were considered applicability provisions. Mr. Stieff stated a few examples, such as provisions dealing with crimes committed after a specific date and tax changes applicable after a certain date.

#### **IV. DISCUSSION OF SPECIFIC PROVISIONS IN PD 3770 DRAFT**

Mr. Bob Rudolph introduced the specific content of provisions in PD 3770. Mr. Rudolph provided a handout to the Commission members describing the content of the bill. He explained that the current practice for dealing with expired provisions is to repeal them by cite, but the bill contains a provision that states that expired provisions will now simply be treated as repealed. Mr. Rudolph stated that the source for the text of the provisions placed in the Indiana Code is verbatim of what exists in the corresponding noncode provision, with the exception of a few stylistic changes and that the bill states that no substantive effect is intended by codification. Mr. Rudolph discussed briefly the provisions related to study committees. Representative Ralph Foley mentioned that

there are changes in a bill in the current session to make the sentencing policy study committee permanent. Representative Foley inquired whether this pending bill and others like it would need to be integrated with PD 3770 in the session and what issues could arise with regard to the timing of passage of these bills. Mr. Stieff explained the process for dealing with such substantive conflicts as the session progresses, and how this process would be used to track and correct these conflicts. Mr. Stieff stated that a conflict could be corrected in the next technical corrections bill if not fixed during session.

Mr. Rudolph continued to explain various sections of the bill, including SECTION 10 regarding the mortgage lending and fraud prevention task force and SECTION 33 concerning local holdover offices, as examples of provisions being placed in the Indiana Code. Mr. Rudolph stated that the bill contains twenty-five sections that the staff felt comfortable placing in the Indiana Code based on analysis of the factors previously mentioned.

Mr. Laramore asked about three sections of tax law that were included in the bill. Mr. Stieff stated that the tax attorneys and staff were able to review those sections, so they are included in the bill.

Ms. Cynthia Baker, professor - Indiana School of Law Indianapolis, inquired about a provision in an article she had read concerning defibrillators and why it was not included in the bill. Mr. Rudolph stated that the provision is not dealt with at this time because it is an applicability provision.

Representative Foley talked about a provision dealing with sales disclosures and whether that type of provision might need to be in the Indiana Code. Mr. Rudolph stated that a noncode provision of this type would probably be dealt with by codifying the provision and retaining the expiration date. Representative Foley commended the staff for their work.

Mr. Laramore stated that he has some comments to make in general, but not specifically about PD 3770. He discussed some concerns regarding the criteria used to analyze the noncode provisions. He stated that as a practicing attorney he would like to see as much of the law contained in the Indiana Code. Mr. Laramore questioned the criteria dealing with whether a large number of people would use the provision and said that provisions used by few people might need to be codified also because attorneys practicing in smaller fields would not have access to colleagues and resources that are abundant for more frequently used provisions and areas of law. Mr. Laramore thought that the five year criteria made more sense when only books were printed, but that the Internet should make it easier to put provisions in the Indiana Code that are in effect fewer than five years before expiration. Mr. Laramore concluded by stating that the criteria should have a bias toward including applicability provisions in the Indiana Code. Mr. Stieff responded that applicability provisions would be addressed in Phase II of the project, but that his thought would be to put applicability provisions in the Indiana Code where it is practicable.

Senator Landske mentioned that LSA could consider these points as the staff continues to work on the project. Ms. Baker asked if there is a way to put something in the Indiana Code as a signal to the reader that noncode provisions exist with regard to the provision. She asked what other states do in this regard. Mr. Stieff stated that the staff could look into what other states do.

Ms. Marcia Oddi, publisher of the Indiana Law Blog, expressed concern that the noncode project is being done in steps and that the bill does not currently contain a blanket repealer. She believes that the longer the project takes to complete, the more problems will arise. She stated that one alternative would be to do nothing now and then do the entire project next year and present the bill on organization day. Ms. Oddi believed that the criteria for analyzing the noncode is too subjective, and is concerned that only a few of the noncode provisions are being put in the Indiana Code. She noted that the Bill Drafting manual should be updated to coordinate bill drafting with the noncode bill.

Representative John Bartlett asked Ms. Oddi if the same problems with the noncode would exist if the project is postponed. She stated that the project would have the same problems to

address and that there are pros and cons to both options. Representative Bartlett noted that if the staff is more concerned about getting the project done right, it might be better to complete the project in two parts.

Ms. Oddi stated her concern that not enough details have been established in the process and that she recommends a detailed outline be developed over a long period of time. Representative Robert Behning thought the staff could move forward this part of the project and didn't find harm in alleviating some of the noncode problems now and resolving the remainder in the next legislative session. Representative Behning disagreed with Ms. Oddi that a noncode bill should be presented at organization day, and stated that he had not seen anything like that done with Code Revision Commission bills.

Mr. Laramore stated that one issue he sees is that the Commission does not want to make it appear that the noncode project is completed with this bill. He noted that Ms. Oddi may be able to inform attorneys through her Internet blog that a process is ongoing to address noncode issues.

Senator Landske said that this smaller project is good for establishing criteria to make the larger project easier, and she believes that this first step will lay the groundwork for the second step going forward.

A motion was made for LSA to prepare legislation for the first step of the project concerning noncode laws, and the motion was adopted by consent. At Mr. Stieff's request, the Commission authorized the inclusion in the digest of the bill the following statement: "The introduced version of this bill was prepared by the Code Revision Commission.". The Commission agreed to have the four senators on the Commission as authors for the bill.

Senator Landske thanked the members, staff, and participants present.

## **V. ADJOURNMENT**

The meeting was adjourned by Senator Landske at 2:45 p.m.